

**Perry City Special Uses and Appeals Board Meeting
6:00 PM Tuesday, February 12, 2013
Perry City Offices, 3005 South 1200 West, Perry Utah**

Board Members Present: Board Member Jim Felix, Board Member Kim Barnard, and Board Member Bruce Howard.

Board Members excused: Chairman Mark Stratford, Board Member Boyd Hirschi, Board Member Suresh Kulkarni, and Board Member Jon Rackham

Others Present: Duncan Murray, City Administrator/Attorney; Susan K Obray, Minutes Clerk

MOTION: Board Member Howard moved to accept Board Member Felix as Acting Chair. Board Member Barnard seconded the motion. All in favor.

1. Approx. 6:00 pm - Call to Order, Opening Ceremonies, and Public Comment

- A.** Call to Order and Pledge Allegiance to the U.S. Flag
Acting Chair Jim Felix called the meeting to order and asked Board Member Howard to lead the Pledge of Allegiance.
- B.** Declare Conflicts of Interest, If Any
Acting Chair Felix asked for conflicts of interest. There were no conflicts.
- C.** Review the Agenda (and Possible Motion to Change the Order of Agenda Items)
No changes to the agenda.
- D.** Approve Minutes for September 11, 2012

MOTION: Board Member Howard moved to approve the September 11, 2012 minutes. Board Member Barnard seconded the motion. All in favor.

**2. Approx. 6:05pm-Special Use/Business Applications
(Final Land Use/License Authority Actions)**

- A.** Renew Special Business Licenses for 2013

Duncan Murray stated that all the business that are classified as “Special” that are on the one page in their packets. He said that when a person comes in to fill out a business license form it fits into one of the 20 codes. Mr. Murray stated that there is only one business with the code “9” and it is a large scale construction which is Geneva Rock Products. He said code “13” is business licenses for rental units. Mr. Murray reported that code “20” is the businesses that have beer licenses that are off premises licenses. He said that code “1 & 2 and some 6” is home business licenses and professional businesses that have conditional use permits (hair salons, daycares, car repair, music teachers). He said the reason they have a conditional use permit is because they have to be checked periodically for adequate parking, safety hazards, etc. Mr. Murray stated that staff recommends that they all be approved.

MOTION: Board Member Howard moved to approve the conditional use permits as presented. Board Member Barnard seconded the motion. All in favor.

3. Approx. 6:15 pm-Training

- A.** Training Regarding Land Use Regulations-Appeals Procedures

Mr. Murray stated that one of the main roles for the Special Uses and Appeals Board is that they hear appeals regarding land use decisions. Mr. Murray stated that anyone with “standing” may timely appeal

any land use decision. He said whatever the ordinance says is who you get to appeal it to. Mr. Murray stated that there is no substitute for reading the local ordinances. He said the person asking the question is entitled to the answer. If the law says you have no legal interest in the issue, then you have no right to demand the issue be heard at all, much less that it be resolved one way or the other. Mr. Murray state that you have to appeal in a timely manner (10 days). Mr. Murray said that there is a local procedure that could be used to resolve land use issues, and the person challenging local decisions must file an appeal using such procedures before the deadline passes. He stated according to statute, there is not cause of action in district court or in arbitration until after the “exhaustion of local administrative remedies.” Duncan stated that if you miss the deadline, you did not exhaust and the issue is closed even though your appeal may have been successful if the appeals process had been used. He said the word “exhaustion” may be well chosen, because if there is a means of appeal, even if it appears to be futile and a waste of time, you have to use it. Mr. Murray stated that there are exceptions, when a federal statute is violated.

He said that appeals are divided into two levels. The first level is internal appeals within the local government’s land use procedures, and second, beyond the county or municipality to the court or the property rights ombudsman. Mr. Murray stated for internal appeals, if a landowner or citizen wishes to have a land use issue heard in arbitration or at court, one of the following appeals procedures must be used first:

- (1) If the matter involves a challenge to the way the zoning ordinance is being applied or interpreted, appeal to a land use appeals authority asking whether the ordinance is being correctly applied; or
- (2) If the matter involves the building, fire, health, landmarks, impact fees, or other special codes or ordinances, use the appeals procedures in those codes or ordinances; or
- (3) If the local action may involve the violation of protected property rights, use the local taking appeals procedures; or
- (4) Follow other appeals procedures as provided in local ordinances:

For appeals beyond the local government, once the local process has been “exhausted,” there are two choices to resolve the matter beyond the local jurisdiction:

- (1) Request arbitration and mediation through the office of the Property Rights Ombudsman; and/or
- (2) File a Petition for Review to the local state district court. (There is no appeal to federal court unless a federal statute is involved.)

Mr. Murray stated every time the land use ordinance is applied, someone has to decide what it means and how it should control the proposed application or use. He said if there is a disagreement about what the language of the zoning ordinance means or how it should be applied, state statute mandates that a local government provide an appeals process to resolve that question. Mr. Murray explained when and where an appeal must be filed. He said if there is no time provided in a local ordinance, you only have 10 days to file an appeal; local ordinances must state who is to hear appeals and interpret ordinances and rules. Mr. Murray stated that an appeals body must post a notice 24 hours in advance as required by the Open and Public Meetings Act, and must also comply with any notice requirements in the local ordinance. Mr. Murray stated that no public hearing is required by state statute and can be held in a regular public meeting. He said the issue is whether the interpretation of the ordinance that is being appealed was correct, or the ordinance was otherwise appropriately applied. The appeals authority must simply review the plain language of the ordinance to determine what it means and how it should be applied and support that conclusion by substantial evidence on the record. Mr. Murray stated that a decision made by an appeal authority may be appealed directly to the district court or, in a case where an unconstitutional taking of property is alleged, to Utah’s property rights ombudsman.

Mr. Murray stated that you do not need a variance if the ordinance does not actually restrict you in the first place. He said if you want the decision to be in your favor, you need to provide strong arguments in support of your position. He gave an example of a case law regarding *Brown v. Sandy City Board of*

Adjustment. In this case he said in 1998, the Utah Court of Appeals considered a case involving residential uses in Sandy. Steve Brown and others with the same idea decided to rent out single family homes to skiers and other visitors on a nightly basis as if they were guest cottages. After receiving objections from neighbors, the city attempted to stop the practice and Brown challenged them to show him wherein the zoning code prohibited overnight rentals.

He said the city cited provisions of the ordinance stated that the single family zones were designated to create “a residential environment.... That is characterized by moderate densities....a minimum of vehicular traffic and quiet residential neighborhoods favorable for family life”. The city also referred to a provision of the ordinance that said “No building or part thereof or other structure shall be erected, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designated, or intended to be used for any purpose or in any manner other than is included among the uses hereinafter listed as permitted or conditional uses in the district in which such building, land, or premises are located”. The court had no problem with this case. Citing the evidence that the code limited occupancy to “families” and Brown was, indeed, renting to “Families”. The court held in his favor. The Sandy ordinance did not limit the rental of properties to a certain minimum period of time and the city could not read in to the ordinance what the ordinance clearly did not say. Mr. Murray stated that Sandy City could have imposed a wide range of restrictions by regulation but they can’t enforce a law they have not adopted.

Mr. Murray gave an example of another case: Caster v. West Valley City. He said West Valley was involved in another case that illustrates how strict the courts read the ordinances. He said a property owner named Caster had a junkyard he called “Back Yard Auto” near the Rocky Mountain Raceway on 2100 south. The junkyard could only exist as a grandfathered use since it could not be legally created under the current ordinance. He said the grandfathered use must be continued without interruptions by the property owner in order to be legal. The city claimed that Caster had abandoned the use because he had not sold or disassembled junk cars for more than a year. The city wanted all junkyard activity to stop and the old cars hauled away. West Valley won at trial, but lost at the Court of Appeals. The record showed there had been continuous use of the property to store abandoned autos for many years. The city ordinance defined the junkyard use as “the use of any lot..... for the sale, storage, keeping, or disassembly of junk or discarded or salvaged material.

Since the word “or” was used instead of the word “and” the appellate court reasoned that, doing any of the listed activities preserved the right to all of them. Since Caster had “stored” and “kept” old cars, he could resume the “sale” or “disassembly” at any time. The ordinance was interpreted as it read, and the junkyard use was preserved since the ordinance provided that any one of the listed uses constituted a junkyard use.

Mr. Murray stated the bottom line is to read the ordinance. If it is not being interpreted correctly and the result goes against your interest, an appeal can resolve the matter in your favor.

4. Approx. 6:40 pm-Questions and Adjourn

A. Questions by Special Uses and Appeals Board Members

There were no questions by the board.

B. Motion to Adjourn

MOTION: Board Member Howard moved to adjourn. Board Member Barnard seconded the motion. All in favor.

